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| EXAMINER |
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JUHO OJALA, JOHAN WIKMAN, JUKKA K. NURMINEN, and  
ATTE LAHTIRANTA

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Appeal 2016-006712  
Application 14/524,826  
Technology Center 2400

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Before JEAN R. HOMERE, MICHAEL M. BARRY, and  
PHILLIP A. BENNETT, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from a Final Rejection of  
claims 1–30. App. Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Appellants identify the real party in interest as Core Wireless Licensing  
S.a.r.l. App. Br. 3.

### *Introduction*

Appellants state that “embodiments of the present invention relate to providing access to data over a network, and more specifically to providing access to media files through an entity (e.g., a server).” Spec. ¶ 2 (Technical Field). Claim 1 is representative:<sup>2</sup>

1. A method comprising:
  - receiving, via short-range communication, at an apparatus, identification information from a wireless device within short-range communication with the apparatus;
  - sending, via one or more processors of the apparatus, at least a portion of the received identification information to a second apparatus; and
  - receiving, from the second apparatus and in response to sending the at least portion of the received identification information, one or more media files at the apparatus, wherein the one or more media files are associated with the wireless device.

App. Br. 11 (Claims App’x).

### *Rejections*

Claims 1, 5, 7–12, 16–21, 25, and 27–30 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Tischer (US 2005/0188399 A1; Aug. 25, 2005) and Woodworth et al. (US 2008/0062246 A1; Mar. 13, 2008). Final Act. 2–10.

Claims 2–4, 13–15, and 22–24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Tischer, Woodworth, and Massimi (US 2009/0217324 A1; Aug. 27, 2009). Final Act. 10–14.

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<sup>2</sup> Appellants argue the patentability of claims 2–30 solely on the basis of the arguments presented for claim 1. *See* App. Br. 5–9.

Claims 6 and 26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Tischer, Woodworth, and Myllyla et al. (US 2008/0275960 A1; Nov. 6, 2008). Final Act. 14–15.

### ANALYSIS

In arguing the Examiner errs in the rejection of claim 1, Appellants contend the combination of Tischer and Woodworth does not teach the recited limitations of the first receiving step and the sending step. *See App. Br. 5–6*. After summarizing the Examiner’s rejection of claim 1, Appellants specifically contend:

According to the Final Office Action’s proposed mapping therefore, performing Claim 1 would entail receiving, via short-range communication, at an apparatus (device 116A), identification information from a wireless device (device 116B/C) within short-range communication with the apparatus (device 116B [*sic*] [*recte* 116A]) and sending, via one or more processors of the apparatus (device 116A), at least a portion of the received identification information (received from device 116B) to a second apparatus (multi-network relay 104).

However, the Final Office Action’s proposed modification of Tischer in view of Wood (i.e., identification information of device 116B/C is routed through the multi-network relay 104 before being delivered to device 116A) is entirely different than Appellant’[s] Claim 1.

*App. Br. 6.*

In other words, Appellants simply conclude claim 1 “is entirely different” than the described mapping of the Examiner’s combination of the teachings of Tischer and Woodworth, without explaining how or why this is the case. The Examiner answers that

Appellant has misconstrued Examiner’s interpretation of the prior art of record as well as how the teachings of the secondary reference would modify the primary reference. Appellant is

still referencing the interpretation of the components in the Tischer reference alone. Once modified by Woodworth, the correlation between the components of Tischer and Appellant's claimed invention are as such: Appellant's apparatus is Tischer's element 104; Appellant's wireless device is Tischer's 116A; and Appellant's second apparatus is Tischer's 116B.

Ans. 6. Appellants provide no rebuttal to the Examiner's findings as explicated in the Answer, which we find to be reasonable. In view of the foregoing, we find Appellants' arguments unpersuasive.

Appellants further argue the Examiner errs because modifying Tischer, "which calls for peer-to-peer video feed exchange for proximally located devices at an event," to include the "uploading, storing, and retrieval of video messages" of Woodworth "would change the principle of operation of Tischer, and is thus improper." App. Br. 7. "Storing a video message for later retrieval and playback runs counter to the purpose and teachings of Tischer, which calls for peer-to-peer video feed exchange for proximally located devices at an event." *Id.* (citing Tischer ¶ 15).

We find this argument unpersuasive also. We remind Appellants the argument that a proposed combination of references would render one of the references unsuitable for its intended purpose or would change its principle of operation is a teaching away argument. *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984) (The court concluded that in effect, "French teaches away from the board's proposed modification" because "if the French apparatus were turned upside down, it would be rendered inoperable for its intended purpose"). The Federal Circuit has held "[a] reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *In re*

*Kahn*, 441 F.3d 977, 990 (Fed. Cir. 2006) (quoting *In re Gurley*, 27 F.3d 551, 553 (Fed.Cir.1994)).<sup>3</sup> In this case, Woodworth’s technique of uploading, storing, and retrieving video messages would further complement Tisher’s peer-to-peer video feed. Appellants have not proffered any portion of Woodworth that discourages, criticizes or otherwise discredits alternatively peer-to-peer video feed of Tischer, as proposed by the Examiner. For at least the aforementioned reasons, we are not persuaded or error in the Examiner’s rejection of claim 1. As the Examiner answers, and we agree,

it is not the concept of storing content for later transmission for which Woodworth is being used, but rather the concept that, once ready for transmission, such a transmission may be performed over a direct link (as is disclosed in Tischer) or alternatively routed through a server (as is not disclosed in Tischer).

Ans. 8 (citing Woodworth ¶ 48) (further noting that Woodworth ¶ 49 teaches “the video message may be transmitted and presented in ‘real-time’”); *see also id.* at 9 (explaining how the “modification of Tischer using the teachings of Woodworth would have produced predictable and desirable results”).

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<sup>3</sup> “If references taken in combination would produce a ‘seemingly inoperative device,’ . . . such references teach away from the combination and thus cannot serve as predicates for a prima facie case of obviousness.” *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1354 (Fed. Cir. 2001) (citation omitted); *see also In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1382 (Fed. Cir. 2007) (“a reference teaches away from a combination when using it in that combination would produce an inoperative result,” but the obviousness analysis must account for “modifications that one skilled in the art would make to a device borrowed from the prior art”).

We note Appellants provide no rebuttal to the Examiner's additional findings in the Answer regarding the combination of Tischer's and Woodward's teachings. We find the Examiner has articulated sufficient "reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir 2006).

Accordingly, we sustain the rejection of claim 1. In doing so, we adopt the findings and reasons of the Examiner as explained in the Answer. *See* Ans. 2–9.

#### DECISION

For the above reasons, we affirm the rejection of claims 1–30. No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED